

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PATRICK RONALD RUSSELL,

4:09CV3249

Plaintiff,

v.

**MEMORANDUM
AND ORDER**

ROBERT HOUSTON, DENNIS
BAKEWELL, MELVIN ROUF,
CURTIS MOFFAT, MICHAEL
EDISON, and MARK DANNER,

Defendants.

In part, I denied a motion for summary judgment and it appears that this case may be headed for a trial on Plaintiff's Eighth Amendment claim. Given Plaintiff's possible history of mental illness and given the likelihood of a trial, I conclude that counsel should be appointed. *See, e.g., Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996)* ("The trial court has broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel") Furthermore, I have consulted with Chief Judge Bataillon and he has agreed that the Federal Practice Fund may be used to assist with the appointment of counsel. Still further, I have consulted with Mr. Stu Dornan and he has graciously agreed to accept an appointment in this case.

Therefore,

IT IS ORDERED that:

1. With thanks for accepting the appointment, Stu Dornan is hereby appointed to represent Plaintiff. The Clerk of the court shall provide Mr. Dornan with a copy of this Memorandum and Order.
2. Mr. Dornan shall promptly enter his appearance.
3. Upon the entry of Mr. Dornan's appearance, the Clerk of the court shall

immediately pay from the Federal Practice Fund the sum of \$1,000 to Mr. Dornan.

4. A second and the last installment of \$1,000 shall become due and payable upon the entry of judgment in the district court or upon an order terminating Mr. Dornan's service as Plaintiff's attorney.

5. Mr. Dornan may incur reasonable expenses when representing Plaintiff in accordance with parts III(A), VI(C), VI(E), VI(F), VI(G), VI(H), and VI(I) of the *Amended Plans for Administration of the Federal Practice Funds and Federal Practice Committee*.¹ See also [NEGenR 1.7\(g\)](#) and [NECivR 54.3-54.4](#).

6. If this suit results in an award of attorney fees pursuant to [42 U.S.C. § 1988](#), Mr. Dornan shall reimburse the Federal Practice Fund from that award for the lesser amount of (a) the attorney's fee and expenses authorized in this order or (b) the attorney's fee and expense awarded pursuant to [42 U.S.C. § 1988](#). He shall retain the greater of those two amounts.

7. The Clerk of the court shall provide Plaintiff, counsel for Defendants, Chief Judge Bataillon and Judge Zwart with a copy of this Memorandum and Order.

8. This case is referred to Judge Zwart for full pretrial management and further progression.

September 24, 2010.

BY THE COURT:

Richard G. Kopf

United States District Judge

¹available at <http://www.ned.uscourts.gov/pom/crtplans/index.html>.

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